



**Billing Code 3510–33-P**

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Parts 764 and 766**

**[Docket No. 120207107-3621-02]**

**RIN 0694-AF59**

Time Limit for Completion of Voluntary Self-Disclosures and Revised Notice of the Institution of Administrative Enforcement Proceedings

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule requires that the final, comprehensive narrative account required in voluntary self-disclosures (VSDs) of violations of the Export Administration Regulations (EAR) be received by the Office of Export Enforcement (OEE) within 180 days of OEE’s receipt of the initial VSD notification. This rule also authorizes the use of delivery services other than registered or certified mail for providing notice of the issuance of a charging letter instituting an administrative enforcement proceeding under the EAR. It also removes the phrase “if delivery is refused” from a provision related to determining the date that notice of a charging letter’s issuance is served based on an attempted delivery to the respondent’s last known address. The Bureau of Industry and Security is making these changes to be better able to resolve administrative enforcement proceedings in a timely manner and provide more efficient notice of administrative charging letters.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Special Agent Richard Jereski, Investigations Division, Office of Export Enforcement, Bureau of Industry and Security, US Department of Commerce, Room H4514, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230. Tel: (202) 482-5036. Facsimile: (202) 482-5889.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Bureau of Industry and Security (BIS), Office of Export Enforcement (OEE), investigates possible violations of the Export Administration Regulations (EAR) and orders, licenses, and authorizations issued thereunder. These investigations may result in allegations of violations that may be settled, adjudicated in an administrative enforcement proceeding, or referred to the Department of Justice for possible criminal prosecution. On November 7, 2012, BIS published a proposed rule (77 FR 66777) that set forth three changes to the EAR, which are being implemented with some revisions here. One change addresses voluntary self-disclosures in connection with OEE's conduct of investigations. The other two changes address service of notice in administrative enforcement proceedings. This rule also makes non-substantive changes to the layout of the regulations to improve readability.

**Deadline for completing the narrative account portion of a voluntary self-disclosure.**

Section 764.5 of the EAR provides a procedure whereby parties that believe they may have committed a violation of the EAR can voluntarily disclose the facts of potential violations to

OEE. Such disclosures that meet the requirements of § 764.5 typically are afforded “great weight” by BIS relative to other mitigating factors in determining what administrative sanctions, if any, to seek. Section 764.5 of the EAR requires an initial notification, which is to include a description of the general nature and extent of the suspected violations and is to be made as soon as possible after the violations are discovered, and is followed by a thorough review and the completion and submission of a narrative account of the suspected violations, including providing all relevant documentation. If the person making the initial notification subsequently completes and submits the narrative account, the disclosure is deemed to have been submitted to OEE on the date of the initial notification. The date of the initial notification may be significant because information provided to OEE may be considered a voluntary disclosure only if the information “is received by OEE for review prior to the time that OEE or another United States Government agency has learned of the same or substantially similar information from another source and has commenced an investigation or inquiry in connection with that information.” (15 CFR 764.5(b)(3)). This rule adds a requirement that the completed narrative account be received by BIS within 180 days of BIS’s receipt of the initial notification for initial notifications received on or after the effective date of this rule.

The Director of OEE may extend this 180-day time deadline at his or her discretion if US Government interests would be served by an extension or upon a showing by the party making the disclosure that more time is reasonably necessary to complete the narrative account. In response to public comments discussed below, this final rule includes some greater detail about what a request to extend the 180-day deadline should contain. Such requests should show

specifically that the person making the request: (1) began its review promptly after discovery of the violations; (2) has been conducting its review and preparation of the narrative account as expeditiously as can be expected, consistent with the need for completeness and accuracy; (3) reasonably needs the requested extension despite having acted consistently with (1) and (2); and (4) has considered whether interim compliance or other corrective measures may be needed and has undertaken such measures as appropriate to prevent recurring or additional violations. Such requests also should set out a proposed timeline for completion and submission of the narrative account that is reasonable under the applicable facts and circumstances. They should also designate a contact person, and provide that contact person's current business street address, email address, and telephone number, for purposes of communicating with OEE regarding the extension request. (A similar requirement to designate a contact person is included in this rule regarding initial notifications). Extension requests may also include additional information that the requestor reasonably believes is pertinent to the request under the applicable facts and circumstances.

Some illustrative examples of circumstances that could, depending on the overall facts and circumstances, support a request that additional time is reasonably necessary include the following:

- Records or information from multiple entities and/or jurisdictions are needed to complete the narrative account.

- Material changes occur in the business, such as a bankruptcy, large layoffs, or a corporate acquisition or restructuring, and present difficulties in gaining access to, or analyzing, information needed to complete the narrative account.
- A pending US Government determination (such as a commodity jurisdiction determination or a classification request) is needed to complete the narrative account.

The Director of OEE may place conditions on his or her approval of an extension. OEE may obtain an agreement to toll the statute of limitations at the time that an initial notification is filed. However, if a tolling agreement that applies to any violations disclosed in the initial notification or discovered during the review conducted to prepare the narrative account has not already been obtained at the time of a request for an extension, the Director of OEE may require one as a condition of approving the extension. The Director of OEE also has discretion to require the disclosing person to undertake specific interim remedial compliance measures as a condition of granting an extension to the 180-day deadline.

Failure to meet either the 180-day deadline or an extended deadline granted by the Director of OEE would not be an additional violation of the EAR. However, that failure may reduce or eliminate the mitigating impact of the voluntary disclosure. The 180-day deadline serves as an incentive to the disclosing party, as meeting the deadline will allow information contained in the narrative account to be credited by OEE as having been disclosed on the date of the initial

notification even if the information was not explicitly described in that initial notification. This new rule is designed to be consistent with the existing requirement in § 764.5(c)(1) that an initial notification be made as soon as possible after violations are discovered. Section 764.5 also will continue to acknowledge that a disclosing party may not be able to identify all of the possible violations of the EAR at the time an initial notification was made, consistent with § 764.5(c)(3), and to recommend that the review following the initial notification should cover a period of five years prior to the date of the initial notification

Imposing a deadline to complete voluntary disclosures is consistent with the practices of other agencies. The International Traffic in Arms Regulations administered by the Department of State impose a 60-day deadline (22 CFR 127.12(c)). Similarly, the Department of the Treasury's Office of Foreign Assets Control also imposes time constraints by requiring that disclosures be made within a reasonable time following the initial notification. Based on its experience with voluntary self-disclosures, BIS believes that 180 days is ample time to complete the narrative account in most instances and that requests for extensions will normally not be necessary or justified.

#### **Institution of administrative enforcement proceedings.**

Section 766.3 of the EAR sets forth the procedures for instituting administrative enforcement proceedings. Those procedures include issuing a charging letter, which constitutes the formal administrative complaint. The charging letter sets forth the essential facts about the alleged

violations and certain other information about the case, and informs the respondent that failure to answer the charges will be treated as a default. Respondents must be notified of the issuance of a charging letter by one of the methods listed in § 766.3(b) of EAR. One allowable method is mailing a copy of the letter by registered or certified mail to the respondent's last known address. This rule adds, as an authorized method of notification, sending a copy of the charging letter to the respondent's last known address by express mail or by a commercial courier or delivery service. The purpose of this change is to facilitate the process of notifying the respondent in cases where the respondent's last known address is in a country with a postal service that is inefficient or unreliable or in which postal delivery tracking information is not available. It also will allow BIS to select an efficient and effective method of notifying the respondent of the issuance of the charging letter. Moreover, unlike registered and certified mail, reputable commercial courier or delivery services and the US Postal Service's express mail use point-by-point tracking or similar electronic tracking methods to provide detailed records of a parcel's delivery or attempted delivery. The use of services that provide detailed tracking information for parcels sent outside the United States will enable BIS to track and monitor the delivery status of pending notifications more efficiently and effectively.

Respondents are required to answer a charging letter within 30 days of being served with notice of its issuance. Prior to the effective date of this rule, the date of service of notice is determined under Section 766.3(c) by the date of delivery, or of attempted delivery if delivery is refused. This rule removes the phrase "if delivery is refused" from § 766.3(c) of the EAR, eliminating the requirement that an attempted delivery must involve documentation that the delivery was

“refused.” The phrase “is refused” focuses on registered and certified mail, which include a postcard-sized hard-copy receipt that is returned to the sender after delivery or attempted delivery. This rule provides for the use of reliable mail or delivery services that do not use such a hard-copy return receipt system and can efficiently and effectively track deliveries and attempted deliveries. In addition, BIS has found that in some instances foreign postal services do not return the receipt even though the parcel or package has been not been returned, including in situations where the respondent subsequently contacts BIS about the charging letter. Moreover, some foreign postal services do not list “refused” as an option on a pre-printed return receipt or do not record other information when the package containing the charging letter is returned, including in situations when the package has been returned unopened. This change to § 766.3(c) would better enable BIS to determine the date of service of notice of issuance of charging letters sent to entities located in foreign countries.

#### **Comments on the proposed rule.**

BIS received comments from one individual and four organizations. Most of the ideas expressed in the comments related to the 180-day limit for completing the narrative account. The comments generally supported the 180-day limit. However, one commenter proposed a shorter time limit with possible extensions. Other commenters expressed concerns that in some cases 180 days would be inadequate.

*Comment:* Two commenters expressed approval of the 180-day limit as providing adequate time to complete the review and compile the narrative account in most cases. Both commenters



noted the possibility that extensions could be granted in limited circumstances. One commenter recommended that the initial limit be set at 60 days, with the possibility of successive 30-day extensions and that the acceptable reasons for an extension narrow as the time since the initial disclosure approaches 180 days. While acknowledging that many VSDs likely could not be completed within 60 days, this commenter stated that under its proposed procedure disclosing parties would better focus on timely completion of voluntary self-disclosures without having to request more than one extension. That commenter also asserted that a 60-day deadline would align BIS's practice with those of the Directorate of Defense Trade Controls.

*Response:* This final rule does not change the basic time limit of 180 days. BIS's intent in setting the 180-day limit is to provide a basic time limit that is sufficient to complete the narrative disclosure in the large majority of voluntary self-disclosures. BIS believes that a party who has begun a voluntary self-disclosure process should be mindful of the requirements of § 764.5, including the deadline imposed by the regulation, and should be capable of organizing and managing its activities with the goal of meeting the deadline. Similarly, in situations where more than 180 days' time is reasonably necessary to complete the task, the disclosing party should be able to explain the reasons why that is the case and provide a reasonable estimate of the additional time needed. BIS further believes that procedures proposed above likely would lead to repeated requests for extensions (and related agency determinations and responses) that should be unnecessary and would themselves increase the total workload for all involved in the voluntary self-disclosure process.

In addition, BIS does not believe that its deadline needs to be “aligned” in the sense of being identical to those of other government agencies. The proposed rule did note that the 180-day deadline is consistent with the practices of other agencies and regulations, including in the Department of State’s International Traffic in Arms Regulations and the Department of the Treasury’s Office of Foreign Assets Control regulations. These examples were intended to demonstrate that by proposing a deadline for completion of voluntary self-disclosures, BIS is acting in the same general manner as other agencies that have a role in export controls. BIS believes prescribing a time limit that is reasonable with respect to EAR violations is more important than having identical time limits with other programs.

*Comment:* Several commenters expressed concern that although the 180-day deadline should generally be sufficient, there may be instances where the time limit would be inadequate. One commenter stated that large organizations with operations in multiple countries may need to obtain records from and interview employees at multiple locations in order to complete an investigation and prepare a thorough final narrative. One commenter noted that the proposed rule authorized the Director of OEE to act at his or her discretion, which the commenter characterized as authorization to act with “unfettered discretion.” The commenter also stated its belief that the rule would not afford a disclosing party a regulatory right to an extension of time even if circumstances warranted an extension. Finally, the commenter described as “not comforting,” BIS’s statement in the preamble to the proposed rule that requests for extensions would, in most instances, not be necessary or justified. Commenters recommended several changes, which are described below.

One such recommendation was to state in the rule the circumstances that would justify an extension. Another recommendation was to state in the rule that extensions would not be unreasonably refused when more time is shown to be reasonably necessary to complete the account. A third recommendation was to allow disclosing parties to submit, within 180 days of the initial disclosure, either a completed narrative account or a supplemental filing that indicates the status of the company's review, including interim remedial measures it has already taken and an action plan with the company's timeline for completion of the review and submission of the final narrative account.

*Response:* BIS does not believe that it is possible to identify in advance all of the circumstances that would make it in the government's interest to grant an extension or those that would make an extension reasonably necessary to complete the narrative account. The facts and circumstances of each matter vary depending on, *inter alia*, the items, destinations and parties involved, the nature and extent of the violations, and the size, scope, and structure of disclosing parties and their export activities and compliance programs. Therefore, case-by-case requests by disclosing parties and decisions by an authorized official are necessary. This final rule sets out in greater detail the types of information that should be included in a request, and as with the preamble to the proposed rule, the preamble to this final rule provides illustrative examples of the type of circumstances that could provide support for a request that additional time is reasonably necessary. These examples are not an exclusive list, and extension requests and the consideration of those requests will, of necessity, be made on a case-by-case basis, but the

examples provide guidance about the type of situations that, depending on the overall facts and circumstances, may justify an extension beyond 180 days. BIS believes that in most instances 180 days should be adequate to complete the narrative account. However, as discussed above, in appropriate instances the Director of OEE may grant an extension to a person seeking an extension of time. In most circumstances, tolling agreements will be signed and agreed upon prior to the extension being provided.

*Comment:* Some commenters expressed a desire for more precision concerning the procedures for submitting a voluntary self-disclosure. Specifically, they asked that the rule state precisely when the 180-day time period begins to run and when during the 180-day period a request for extension may be submitted. These commenters also asked for more information about the timing of a request for an extension. They asked whether a request for an extension may be submitted with the initial disclosure, whether a request may be submitted after the 180 days has elapsed, and what would happen if a disclosing party submitted a request before the 180 days had elapsed, but too late for BIS to make a decision and respond within 180 days.

*Response:* BIS agrees with the comments summarized in the immediately preceding paragraph that it would be more helpful to provide more information about the procedures surrounding the 180-day deadline and for requesting an extension than was provided in the proposed rule. In response to those comments, this final rule provides that guidance. This final rule states that, for purposes of calculating the 180-day deadline, the date of initial notification is the date that the initial notification is received by OEE. BIS will notify the disclosing party in writing of the date

that the initial notification was received. To enable such notification, BIS has added a new requirement that parties should designate a contact person in their initial notification and provide that person's contact information. For the narrative account to be considered timely under paragraph (c)(2)(iii) of § 764.5, the disclosing party must submit the completed narrative account in time for BIS to receive it within 180 days of BIS' receipt of the initial notification or, where appropriate, seek and receive an extension from BIS. As this rule indicates, however, initial notifications should be sent so that they are received by OEE as soon as possible and narrative accounts should be complete, accurate, and timely submitted.

This final rule also states that to be considered, a request for an extension of time to submit the narrative account must be received by OEE before the deadline for receipt of the narrative account. The Director of OEE will evaluate all of the facts and circumstances surrounding a request and any related investigation(s) in deciding whether to grant an extension. Requests for an extension should be made as soon as possible once a disclosing person determines that it will be unable to meet the deadline or the extended deadline where an extension previously has been granted, and possesses the information needed to prepare an extension request in accordance with paragraph (c)(2)(iv)(B). Parties who request an extension shortly before the deadline incur the risk that the Director of OEE will be unable to properly consider and determine the request and communicate his or her decision before the deadline. That said, BIS believes that disclosing parties typically will need some time after the initial notification to acquire the facts that may justify an extension and prepare the extension request, including proposing a reasonable

extended timeline for the completion and submission of the narrative account. BIS expects it will be rare for parties to request an extension of time in their initial disclosure, because it is unlikely that disclosing parties will have at the time of the initial notification all information pertinent to an extension request or the ability to show that an extension is needed despite prompt and diligent efforts to complete their review and prepare a narrative account.

The Director of OEE also is unlikely to grant extension requests that appear be “boilerplate” requests not based on the particular facts and circumstances, or to grant repeated requests or requests that appear to be submitted on a routine, “it can’t hurt to ask” basis. As discussed in the preamble, this final rule provides additional detail concerning the contents of an extension request, which should limit the number of routine or boilerplate requests.

*Comment:* One commenter recommended that BIS impose a reasonableness standard as to both tolling agreements and remedial measures that may be required when granting an extension. The commenter asserted that tolling agreements extending back more than five years prior to the initial disclosure have sometimes been required.

*Response:* BIS understands that there may be times when meeting the 180-day deadline will not be possible (see discussion above); however, as also discussed, BIS must be able to appropriately remedy matters brought to light in a disclosure and will require (in most cases) the signing of a tolling agreement to extend the statutory limit. BIS will continue its practice of seeking

appropriate tolling agreements and remedial measures that take into account the specific facts and circumstances of each case in requiring a tolling agreement and any remedial measures.

*Comment:* One commenter recommended that BIS specify what constitutes a completed narrative account. The commenter suggested that an explicit definition of a completed VSD would ensure consistency and uniformity and lead to a more efficient and transparent process for all parties. BIS could then request additional information or documentation as needed. The commenter proposed that the elements set forth in § 764.5(c)(3), (4) and (5) should satisfy the requirements of a voluntary self-disclosure. This commenter also recommended that a disclosing party who “prepares a VSD in good faith that reasonably addresses all applicable elements in § 764.5(c)(3), (4) and (5), . . . should be granted the presumption of acceptance as ‘complete’ when received by OEE.”

*Response:* BIS agrees with this comment to the extent that it may be helpful to the disclosing party to know when and how they can meet the 180-day deadline. To be considered a complete submission for purposes of meeting the 180-day deadline (or the extended deadline if one is granted by BIS), the voluntary disclosure must meet all of the relevant requirements of Section 764.5 of the EAR, including paragraphs (c)(3), (c)(4), and (c)(5). In response to public comments on the proposed rule, paragraph (c)(2)(iii) of § 764.5 in this final rule so provides. In addition, as discussed in the preamble, paragraph (c)(2)(iv) provides greater detail concerning the contents of an extension request. Under paragraph (c)(2)(iv), a person making an extension

request may also submit additional information it reasonably believes is pertinent under the applicable facts and circumstances. As currently with regard to initial notifications and narrative accounts submitted to BIS, OEE may seek supplemental information from a person making an extension request after its receipt and review of the request.

*Comment:* BIS received several comments concerning informing the disclosing party about the status of the investigation. One recommendation was that BIS “communicate the status of the investigation of the voluntary self-disclosure, akin to the status updates in SNAP-R” (the system for electronically submitting export license applications and certain other documents to BIS and monitoring their status). Another recommendation was that BIS be required to acknowledge receipt of a completed disclosure within some reasonable time after its receipt. One commenter acknowledged that it is perhaps impractical to require BIS to complete all action on a voluntary self-disclosure within a specified time period, possibly 180 days, but stated that it is practical to expect that BIS will dispose of a voluntary self-disclosure as promptly as possible given the circumstances of the disclosure. This commenter recommended that OEE be required to send the disclosing party a status report within 180 days of the receipt of the completed VSD and every 90 days thereafter.

*Response:* BIS works to resolve voluntary self-disclosures promptly. However, voluntary self-disclosures vary in number, size, and complexity. In addition, other investigations and activities can affect the amount of resources that BIS can devote to resolving voluntary self-disclosures.



Therefore, BIS cannot set a time limit for completion of investigations made in response to voluntary self-disclosures.

*Comment:* Two commenters expressed approval of allowing service of charging documents by private courier. One noted that doing so would be a modernization of BIS procedures.

*Response:* BIS concurs.

### **Non-substantive Changes to Layout to Improve Readability**

In addition to the changes proposed in the proposed rule and those made in response to the public comments, this final rule reorganizes § 764.5(c)(2) by breaking it into multiple designated paragraphs, each addressing separate topics, with italicized headers to improve readability.

### **Rulemaking Requirements**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This rule is consistent with the goals of Executive Order 13563. This rule has been determined not to be a significant rule for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501, *et seq.*, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. This rule involves an approved information collection entitled “Procedure for Voluntary Self-Disclosure of Violations” (OMB control number 0694-0058). BIS believes that the changes to the voluntary disclosure procedures that this rule describes would have no material effect on the burden imposed by this collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to Jasmeet Seehra, Office of Management and Budget (OMB), by email to [jseehra@omb.eop.gov](mailto:jseehra@omb.eop.gov) or by fax to (202) 395-7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, Room 2099B, 14<sup>th</sup> Street and Pennsylvania Ave., NW, Washington, DC 20230 or by email to [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov) referencing RIN 0694-AF59 in the subject line.

3. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel

for Regulations, Department of Commerce, submitted a memorandum to the Chief Counsel for Advocacy, Small Business Administration, certifying that this rule will not have a significant impact on a substantial number of small entities. This final rule adds a new requirement that parties that decide to submit an initial notification should include their name and contact information with the notification. This request for contact information was not in the proposed rule. However, because the requirement to include contact information in any voluntarily submitted initial notification will not have a significant additional impact on a substantial number of small entities or increase the economic burden more than a nominal amount, no changes were necessary to the rationale for the certification in the proposed rule (77 FR 66777, 66778, November 7, 2012). BIS received no comments on that rationale and it is not being changed for this final rule. Therefore it is not repeated here.

On August 21, 2001, the Export Administration Act of 1979, as amended, expired and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended most recently by the Notice of August 15, 2012, 77 FR 49699 (August 16, 2012), has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

List of Subjects

*15 CFR Part 764*

Administrative practice and procedure, Exports, Law enforcement, Penalties

*15 CFR Part 766*

Administrative practice and procedure, Confidential business information, Exports, Law enforcement, Penalties

For the reasons stated in the preamble, parts 764 and 766 of the Export Administration Regulations (15 CFR parts 730 – 774) are amended as follows.

PART 764 – [AMENDED]

1. The authority citation for part 764 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

2. Revise § 764.5(c)(2) to read as follows:

**§ 764.5 Voluntary self-disclosure.**

\* \* \* \* \*

(c) \* \* \*

(2) *Initial notification.* (i) *Manner and content of initial notification.* The initial notification should be in writing and be sent to the address in paragraph (c)(7) of this section. The notification should include the name of the person making the disclosure and a brief description of the suspected violations, and should designate a contact person regarding the initial notification and provide that contact person's current business street address, email address, and telephone number. The notification should describe the general nature and extent of the violations. OEE recognizes that there may be situations where it will not be practical to make an initial notification in writing. For example, written notification may not be practical if a shipment leaves the United States without the required license, yet there is still an opportunity to prevent acquisition of the items by unauthorized persons. In such situations, OEE should be contacted promptly at the office listed in paragraph (c)(7) of this section.

(ii) *Initial notification date.* For purposes of calculating when a complete narrative account must be submitted under paragraph (c)(2)(iii) of this section, the initial notification date is the date the notification is received by OEE. OEE will notify the disclosing party in writing of the date that it receives the initial notification. At OEE's discretion, such writing from OEE may be on paper, or in an email message or facsimile transmission from OEE, or by any other method for the transmission of written communications. Where it is not practical to make an initial notification in writing, the person making the notification should confirm the oral notification in writing as soon as possible.

(iii) *Timely completion of narrative accounts.* The narrative account required by paragraph (c)(3) of this section must be received by OEE within 180 days of the initial notification date for purposes of paragraph (b)(3) of this section, absent an extension from the Director of OEE. If the person making the initial notification subsequently completes and submits to OEE the narrative account required by paragraph (c)(3) of this section such that OEE receives it within 180 days of the initial notification date, or within the additional time, if any, granted by the Director of OEE pursuant to paragraph (c)(2)(iv) of this section, the disclosure, including violations disclosed in the narrative account that were not expressly mentioned in the initial notification, will be deemed to have been made on the initial notification date for purposes of paragraph (b)(3) of this section if the initial notification was made in compliance with paragraphs (c)(1) and (2) of this section. Failure to meet the deadline (either the initial 180-day deadline or an extended deadline granted by the Director of OEE) would not be an additional violation of the EAR, but such failure may reduce or eliminate the mitigating impact of the voluntary disclosure under Supplement No. 1 to this part. For purposes of determining whether the deadline has been met under this paragraph, a complete narrative account must contain all of the pertinent information called for in paragraphs (c)(3), (c)(4), and (c)(5) of this section, and the voluntary self-disclosure must otherwise meet the requirements of this section.

(iv) *Deadline extensions.* The Director of OEE may extend the 180-day deadline upon a determination in his or her discretion that US Government interests would be served by an

extension or that the person making the initial notification has shown that more than 180 days is reasonably needed to complete the narrative account.

(A) *Conditions for extension.* The Director of OEE in his or her discretion may place conditions on the approval of an extension. For example, the Director of OEE may require that the disclosing person agree to toll the statute of limitations with respect to violations disclosed in the initial notification or discovered during the review for or preparation of the narrative account, and/or require the disclosing person to undertake specified interim remedial compliance measures.

(B) *Contents of Request.* (1) In most instances 180 days should be adequate to complete the narrative account. Requests to extend the 180-day deadline set forth in paragraph (c)(2)(iii) of this section will be determined by the Director of OEE pursuant to his or her authority under this paragraph (c)(2)(iv) based upon his consideration and evaluation of US Government interests and the facts and circumstances surrounding the request and any related investigations. Such requests should show specifically that the person making the request:

- (i) Began its review promptly after discovery of the violations;
- (ii) Has been conducting its review and preparation of the narrative account as expeditiously as can be expected, consistent with the need for completeness and accuracy;
- (iii) Reasonably needs the requested extension despite having begun its review promptly after discovery of the violations and having conducted its review and preparation of the narrative

account as expeditiously as can be expected consistent with the need for completeness and accuracy; and

(*iv*) Has considered whether interim compliance or other corrective measures may be needed and has undertaken such measures as appropriate to prevent recurring or additional violations.

(2) Such requests also should set out a proposed timeline for completion and submission of the narrative account that is reasonable under the applicable facts and circumstances, and should also designate a contact person regarding the request and provide that contact person's current business street address, email address, and telephone number. Requests may also include additional information that the person making the request reasonably believes is pertinent to the request under the applicable facts and circumstances.

(C) *Timing of requests.* Requests for an extension should be made before the 180-day deadline and as soon as possible once a disclosing person determines that it will be unable to meet the deadline or the extended deadline where an extension previously has been granted, and possesses the information needed to prepare an extension request in accordance with paragraph

(c)(2)(iv)(B) of this section. Requests for extension that are not received before the deadline for completing the narrative account has passed will not be considered. Parties who request an extension shortly before the deadline incur the risk that the Director of OEE will be unable to consider the request, determine whether or not to grant the extension, and communicate his or her decision before the deadline, and that any subsequently submitted narrative account will be considered untimely under paragraph (c)(2)(iii) of this section.

\* \* \* \* \*



**PART 766 – [AMENDED]**

3. The authority citation paragraph for part 766 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

4. Section 766.3 is amended by revising paragraphs (b)(1) and (c) to read as follows:

**§ 766.3 Institution of administrative enforcement proceedings.**

\* \* \* \* \*

(b) \* \* \*

(1) By sending a copy by registered or certified mail or by express mail or commercial courier or delivery service addressed to the respondent at the respondent's last known address;

\* \* \*

(c) The date of service of notice of the issuance of a charging letter instituting an administrative enforcement proceeding, or service of notice of the issuance of a supplement or amendment to a charging letter, is the date of its delivery, or of its attempted delivery, by any means described in paragraph (b)(1) of this section.

Dated August 5, 2013

Kevin J. Wolf

Assistant Secretary for Export Administration

[FR Doc. 2013-19364 Filed 08/08/2013 at 8:45 am; Publication Date: 08/09/2013]